

REMARKS/ARGUMENTS

Claims 1-11 are pending in the instant application.

Amendment to the Claims

In independent claim 1, the expression "second port (7) that has a first flexible membrane" in claim 1 has been replaced by the expression: "second port (7) that is sealed by a first flexible air- and liquid-proof membrane". The expression "first flexible membrane" has been replaced by the expression "first flexible air and liquid-proof membrane" where it appeared in the subsequent dependent claims 2-10 for the sake of consistency. Support for these amendments may be found on page 5, lines 3-4 of the patent application as filed. No new matter has been added.

Rejection under 35 U.S.C. § 103

Claims 1-11 are rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 5,254,097 to Schock, *et al.* ("Schock"), taken alone. Applicant respectfully traverses the rejection, for at least the following reasons.

Independent claim 1 recites a device for injection comprising, *inter alia*, "a second channel (5) for conveyance of a second medical substance and a second connecting component (6) having a second port (7), that is sealed by a first flexible air- and liquid-proof membrane (17)". This feature is neither taught nor suggested by Schoock.

Shock does not disclose a device comprising a channel sealed by an air- and liquid-proof membrane. Instead, Shock discloses a channel (secondary lumen 42) provided with a (hemostatic) valve at its distal end. The valve includes a puncture or slit portion 46 (see col. 5, lines 29-39 and figure 2, and the embodiments shown in figures 4, 5 and 7). Contrary to the device disclosed by Schock, the air- and liquid-proof membrane of the device according to claim 1 will avoid contamination of the system and leakage of medical substances from the system to the environment.

Claims 2-10 each depend, either directly or indirectly, from independent claim 1. These dependent claims are each separately patentable, but in the interest of brevity, they are offered as patentable for at least the same reasons as their underlying independent base claim, the features of which are incorporated by reference.

Turning to independent claim 11, the claim recites

An injection device comprising:

a body having a first channel extending in a generally straight line through the body, the channel for conveying a first medical substance;

The Office Action admits that “Schock does not teach that the first channel extends in a generally straight line through the body of the device” as recited in claim 11. However, the Office Action avers that “Instead, the second channel extends in a generally straight line through the device (Fig 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the first channel generally straight as one of ordinary skill in the art would have expected the device to function equally well with either channel being straight.” Applicant respectfully disagrees.

Initially, Schock does not teach any channel that extends in a generally straight line through the body. A first channel (primary lumen 40) has a pronounced bend along its length through the body 10. The second channel (secondary lumen 42) does not extend through the body, but terminates at its intersection with the primary lumen 40; “The secondary lumen 42 is provided at its distal end with a hemostatic valve disposed between secondary lumen 42 and common lumen 38.” (Col. 5, l. 31-34) (emphasis added). Therefore, the modification proposed by the Office Action is not a mere reversal as suggested, but a structural modification that is unsupported by the reference or the prior art. “Rarely, however, will the skill in the art component operate to supply missing knowledge or prior art to reach an obviousness judgment.” *Al-Site Corp. v. VSI International Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

Moreover, Applicant agrees with the Office Action in that a skilled person would see no particular reason for making the first channel extend in a straight line through the body of the device rather than the second channel. Which is exactly why it would not have been obvious to modify Schock in the manner proposed by the Office Action. The Supreme Court held in *KSR Int’l Co. v. Teleflex, Inc.*, that it is necessary for the courts (and the Office) to identify an apparent reason to modify the prior art to arrive at the claimed invention, and further that that analysis must be explicit to permit review. 550 U.S. ___, 127 S. Ct. 1727 (2007). In this case, there is no such apparent reason for the proposed modification. The features recited in claim 11 are, as the Office Action itself confirms, not obvious since “a skilled person would expect the device to function equally well with either channel being straight”.

However, the invention recited in claim 11 is based on the insight that arranging the first channel to extend in a straight line through the body of the device is more advantageous than arranging the second channel to extend in a straight line through the body of the device. Such an arrangement is not obvious in view of Schock.


Therefore, Applicant respectfully submits that the rejection has been obviated, and kindly requests favorable reconsideration and withdrawal.

Conclusion

In light of the foregoing, Applicant respectfully submits that the claims are patentable, and kindly solicits an early and favorable Notice of Allowability.

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Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert C. Faber", is written over a horizontal line.

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